IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6573 of 2006

Shri Suresh Jayendra Patil and ors. ..Petitioners

vs.

Gram Panchayat Mouje Hupari
and others ..Respondents

Shri R.G.Ketkar for petitioners.
Shri T.S.Ingale for respondents.

CORAM: S.C.DHARMADHIKARI J.
14th June, 2007

P.C.

1. Rule. Shri Ingale appearing for the respondents waives service. By consent of Shri Ketkar and Shri Ingale petition is heard finally at this stage.

2. The petitioners have instituted Reg.Civil Suit No.19 of 2005 in the court of Civil Judge, Jr.Dn., Ichalkaranji against the respondents/original defendants for permanent injunction restraining them from in any manner putting up construction on the suit property. The suit property as described in the plaint is Gat No.924. According to the petitioners, the suit had to be filed because the local Gram Panchayat was desirous of putting up construction on this survey/Gat number. The construction was proposed in pursuance of the order passed on 11th March, 2005 by the Additional Collector, Kolhapur in Revision Application

No.2 of 2005.

3. The Trial Court after hearing both sides was pleased to grant temporary injunction in favour of the plaintiff restraining the defendant gram panchayat from making construction on the suit property till decision of the suit. The Trial Court's order dated 13th April, 2005 was the subject matter of challenge in Misc.Civil Appeal No.72 of 2005 at the instance of the respondent/original defendants.

4. The lower Appellate Court upon an elaborate discussion of the merits of the matter recorded a finding that the gram panchayat is not precluded from utilising the suit property for the purpose of erection of the school building, atleast, to the extent of 10% of the total area. In that behalf reliance was placed upon Condition No. 14(2) in the order of the Additional Collector referred to above.

5. Justifiable grievance of Shri Ketkar is that at the interlocutory stage, the lower Appellate Court should not have embarked upon an enquiry with regard to the status of the petitioners, their right in the property and nature of the user permitted pursuant to the order of the Additional Collector. He submits that the Additional Collector's order nullifies virtually the order passed in favour of

the petitioners by the Sub Divisional Officer. He submits that the applicability of the Town Planning Act to the area under consideration is also an issue which should not have been decided at the interlocutory stzage. On the own showing of the parties, arguable issue arises and this is a fit matter where statusquo at site should be preserved and protected.

6. Shri Ingale on the other hand submits that local gram panchayat is not putting up any construction other than the school building and that too a primary school. He submits that atleast 10% of area ought to have been permitted to be utilised by the Trial Court in pursuance of the order passed by the Additional Collector. That apart, by such user, no equities would be created and user or construction will always abide by the final decision in the suit. If the construction of primary school is not permitted then grave and irreparable loss would be caused to the Panchayat.

7. With the able assistance of the learned Counsel appearing for both sides, I have perused the petition and annexures thereto. The Trial Court and lower Appellate Court were aware that the order passed by the Additional Collector is during the pendency of the suit and atleast after institution thereof. The revision application before the Additional Collector under sec.257 of

Maharashtra Land Revenue Code, 1966 was directed against the order dated 10th December, 1982 which is in favour of the predecessor in title of the petitioners.

8. The issue which arises for consideration in the present suit pertains to the area or open space for the benefit of the residents in the vicinity, and the nature of user that could be permitted by the local body. The petitioners do not wish to part with this amenity which, atleast, ensures some space open to sky near their residence. The residents do not mind open space being used as a play ground and construction of a Club House, Library or Gymanasium during the pendency of the suit. However, there should not be any construction of permanent nature. Such being the issues in the suit at prima facie stage this was enough for preserving and protecting the status quo at the site. Elaborate or detailed discussion is not warranted and it is not as if the parties to the litigation are prejudiced by such orders, more so, in the instant case. In my view, the lower Appellate Court was in patent error in going to all details at the interlocutory stage and pronouncing upon the same while vacating the interlocutory order of the Trial Court.

9. The impugned order, therefore, is clearly unsustainable. Rule is made absolute in terms of prayer clause (b). The order of the lower Appellate Court stands

quashed and set aside. Injunction granted by the Trial Court on 13th April, 2005 shall continue till hearing and final disposal of the suit. The Trial Court should endeavour and dispose of the suit as expeditiously as possible and in any event within a period of six months from the date of receipt of the copy of this Court's order. The suit to proceed on its own merits uninfluenced by any observations made in the order impugned or instant order.

(S.C.DHARMADHIKARI J.)